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10/629,116

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Peter Mardilovich

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INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

LEE, CYNTHIA K

ART UNIT

PAPER NUMBER

1795

NOTIFICATION DATE

DELIVERY MODE

07/16/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: PETER MARDILOVICH, GREGORY S. HERMAN, DAVID
CHAMPION, and JAMES O'NEIL

Application No. 10/629,116
Technology Center 1700

Mailed: July 16, 2009

Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.
Perry, Supervisory Paralegal Specialist, Review Team.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on June 16, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

MISSING CLAIM REJECTIONS

Non-Final Rejection

A review of the file reveals that in the last Office Action, the Non-Final Rejection mailed August 21, 2008, specifically the cover sheet, Form PTOL-90A, , indicates claims 49-84 are rejected. However, Claims 54, 63, and 68-69 are not included in the rejections of the claims other than the cover page (Form PTOL-90). The Final Rejection is silent to the actual disposition of Claims 54, 63, and 68-69.

Examiner's Answer

The Examiner's Answer, issued February 24, 2009, is also silent to the disposition of Claims 54, 63, and 68-69.

The Examiner must clarify the status of Claims 54, 63, and 68-69. The Examiner's Answer issued February 24, 2009, should be "vacated" and a Supplemental Examiner's Answer issued. As a reminder, all Supplemental Examiner's Answer's require the signature of the Director and/or the designee.¹ If the Supplemental Examiner's Answer rejects Claims 54, 63, and 68-69, the appendix Claims on Appeal, Grounds of Rejection and Arguments should also be updated and/or corrected.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed on April 23, 2009, in response to the Examiner's Answer mailed February 24, 2009.

Title 37, Code of Federal Regulations, §41.43 states:

¹ In TC 1700, the Director's signature or a QAS signature is acceptable.

(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

The Communication mailed June 10, 2009, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner's Answer as per MPEP§ 1208, part II. A Supplemental Examiner's Answers requires a Director or designees approval.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) vacate the Examiner's Answer mailed February 24, 2009 and the Communication mailed June 10, 2009, mailed in response to the Reply Brief filed April 23, 2009;

2) issue a Supplemental Examiner's Answer in response to both the Appeal Brief filed November 20, 3008 and the Reply Brief filed June 20, 2009,

2a) setting forth the correct status of all Claims including claims 54, 63, and 68-69;

2b) updating or correcting the Examienr's Answer, appendix: Claims on Appeal, Grounds of Rejection and Arguments, and

2c) any other appendix of the Answer as may be required;

3) include the approval of the TC Director or the designee; and

4) if appropriate issue a proper acknowledgment of the Reply Brief dated April 23, 2009, in accordance with MPEP§ 1208, part II

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5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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